

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
RECEIVED (EASTERN DIVISION)

2008 JUN -9 A 10:54)
WILMONT BARNETT, pro'se)
BRA P. HACKETT, C)
U.S. DISTRICT COURT)
MIDDLE DISTRICT ALA) CASE NO. 2:06-CR-169-WKW_15
VS)
)
)
)
UNITED STATES OF AMERICA)
)

MOTION UNDER TITLE 18 U.S.C. § 3582(c)(2) & § 3553(a) AND OF
THE UNITED STATES SENTENCING GUIDELINES § 1B1.10 and 1B1.11
FOR THE REDUCTION OF SENTENCE BASED ON AMENDMENT 706, FOR TWO
LEVELS FOR COCAINE_BASE EFFECTIVE NOVEMBER 1, 2007, BECAME RETROACTIVE
MARCH 3, 2008, .

Defendant, Wilmont Barnett, acting pro'se, respectfully requests
this Honorable Court to modify Defendant's sentence base offense
level to a level 24 pursuant to the November 1, 2007, reduction
of two levels for cocaine-base of the Upper Limit of Drug Quantity
Table; apply any upward or downward adjustments or departures; and
allow counsel to argue for a downward departure based on post-conviction
rehabilitation. In support thereof Defendant states:

1. On January 31, 2008, the Defendant was sentenced at a level 34
category six(6) between the guideline range of 262-327 as a career
offender.

2. The Guideline base offense level on January 31, 2008, under United
States sentencing Guideline 2D1.1(c), for at least 5grams of cocaine-
base but less than 20 grams of cocaine-base was a level 26, in which
the Defendant was accountable for was 14grams of crack at a level

26, category six(6), between the range of 120 and 150 months. The Defendant received a eight level enhancement under the career criminal provision which was a level 34, he then received a three point reduction under 3E1.1(a)(b) which gave him a base offense level of 31 between the range of 188-235.

3. Since the Defendant's sentencing, the United States Sentencing Guidelines have been amended to reduce the highest quantity base offense level by two levels for cocaine-base offenses, which came into effect March 3, 2008, pursuant to §1B1.10, at a very minimum Defendant's base offense level should be reduced to a level 24, even though Defendant was a career offender his criminal history does not call for the enhancement provision under 4B1.1, in which this court has the authority to depart because the guidelines are no longer mandatory but advisory, see Booker, 128 S.Ct. 738 "restrictions on the final sentence imposed, based upon the guideline is inconsistent with the non-mandatory nature of the guideline". see also UNITED STATES VS SANCHEZ, 05-3812(L) "The courts mistaken conception that it lacked the authority to depart from the career offender provision was an error of law".

The Defendant ask the courts to depart from the career offender provision under 18 U.S.C. 3553(a), which consistent with 18 U.S.C. 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. 3553(a), and to attempt to reinstate the mandatory nature of the career offender guidelines is unconstitutional and in violation of BOOKER, 543 U.S. 261, Booker, should still be applicable to making a determination on the reduction of a sentence under the Amendment applied to 18 U.S.C. 3582(c)(2) motions, effecting resentencing retroactive crack amendment for career offender, see also UNITED STATES VS BOOKER 1:00-CR-434-MHS DKT.44 11/1/08, "where the government acknowledge the defendant career offender status but still did not oppose the two level reduction under the new crack amendment 706".

Section 994(h) However, by its terms, is a direction to the sentencing commission, not to the court and it finds no express analysis in Title 18 or 21, which 21 U.S.C. 841(b) expressly establish the minimum and maximum prison terms that the court is allowed to impose for violation of 841(a), there is no statutory provision instructing the court to sentence a career offender at or near the statutory maximum. Under 18 U.S.C. 3553(a)(4)(A), it does not instruct the court to impose such a sentence or not for the court to depart when the changes in the Guideline have occurred see generally UNITED STATES VS LABONTE, 520 U.S. 751, 761 n.5 (1997).

Wherefore, it is respectfully requested this honorable court reduce defendant's sentence in accord with 3553(a), and in light of UNITED STATES VS BOOKER, 125 S.Ct. 738, pursuant to amendment 706, for cocaine-base two level reduction.

Respectfully submitted,

Wilmont Barnett

WILMONT BARNETT 12129-002
UNITED STATES PENITENTARY
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ATLANTA, GA 30315

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing motion has been forward to the

UNITED STATES ATTORNEY OFFICE

P.O.BOX 197

MONTGOMERY AL,36101

by placing the said document in the hands of the officals here at U.S.P. Atlanta postage paid in full on this 6th day of June 2008.

Respectfully submitted,

Wilmont Barnett

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